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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
VINCENT RIZZUTO, JR.,

Defendant,

-against-

UNITED STATES OF AMERICA,

Plaintiff,
-----X

Korman, J.

MEMORANDUM & ORDER
98-CR-0581 (ERK)

FILED *QMS*
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ JUL 26 2007 ★

BROOKLYN OFFICE

The defendant's motion to reduce his sentence is denied for the reasons stated in the memorandum of the Probation Department. Moreover, because petitioner pled guilty, pursuant to F.R.Crim. P, 11(e)(1)(c) and agreed to a sentence of 288 months, any subsequent misapplication or subsequent retroactive change in the Sentencing Guidelines would not justify a reduction in his sentence. Indeed, the plea agreement, (a copy of which is annexed hereto) did not contain any guidelines calculations. I note, parenthetically, that the Sentencing Guidelines, as initially calculated provided for a sentence of 360 months to life on Count One and 60 months on Count Two to run consecutive to the sentence imposed on Count Eight. PSR paragraphs 67-68.

The motion is denied.

SO ORDERED:

Brooklyn, New York
July 25, 2007

s/Edward R. Korman

Edward R. Korman
United States District Judge